

REMARKS

Applicant has carefully reviewed the application in light of the Office Action dated January 24, 2002. At the time of the Office Action, Claims 9-13, 22-24, and 26 were pending in the application.

Section 112 Rejections

Claim 26 stands rejected under 35 U.S.C. § 112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended Claim 26 to correct antecedent basis. Applicant respectfully submits that the scope of protection of Claim 26 has not been narrowed. Applicant further submits that no new matter is added by this amendment and requests withdrawal of this rejection.

Section 103 Rejections

Claims 9-13, 22-24, and 26 were rejected under 35 U.S.C. § 103, as being unpatentable over U.S. Patent No. 5,008,814 issued to *Mathur* ("*Mathur*") in view of U.S. Patent No. 6,338,149 issued to *Ciccone, Jr., et al.* ("*Ciccone*"). Applicant respectfully traverses this rejection, and the assertions and determinations therein.

"In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." MPEP § 2141.02. A *prima facie* case of obviousness requires that each and every claim limitation be taught or suggested in the references and there be a suggestion or motivation to modify the reference. See MPEP § 2143. The Examiner suggests that *Mathur* "includes the steps of downloading, installing, determining (verifying operating correctly) and restoring the first version." Office Action, p. 2-3. In contrast, Claim 9 recites, in part, "*automatically* installing a downloaded update to generate a second version of the program" and "*automatically* determining whether the second version of the program is operating correctly" (emphasis added). *Mathur* does not teach or suggest at least these elements of Claim 9. Instead, *Mathur* teaches "how a trial use of a new system software is initiated. The trial use is initiated *when the operator issues a 'cutover' command* to a master task." *Mathur*, c. 12, ll. 9-12 (emphasis added). *Mathur*

further teaches “an update process whereby a system software in a plurality of target nodes is designated as a preferred operative version of a node. The update process *is initiated by an operator command...*” *Mathur*, c. 12, ll. 62-66 (emphasis added); *see, e.g., Mathur*, Appendix A:

SL_OPER_CUTOVER_QUERY:

/ When the user requests a memory card query, th...*

/ message type is either one of these. The later...*

/ done during a cutover request from the user.*

(emphasis added).

Ciccone also does not teach or suggest at least these elements of Claim 9. Instead, *Ciccone* teaches “a user 58, administrator 50, or help desk person 54 employ the program sppcheck 40 to identify deviations from the expected product states.” *Ciccone*, c. 7, ll. 14-17 (emphasis added); *see also id.*, FIGURE 2. *Ciccone* further teaches that “the administrator 50 executes the installation instructions 74 for the product on the desired node 76.” *Ciccone*, c. 8, ll. 49-51 (emphasis added); *see also id.*, FIGURE 3. In addition, while *Ciccone* teaches fourteen specific tasks that are automatically performed, *Ciccone* does not teach or suggest “*automatically* installing a downloaded update to generate a second version of the program” or “*automatically* determining whether the second version of the program is operating correctly.” *See Ciccone*, c. 20, l. 57 – c. 21, l. 10. Therefore, neither *Mathur* nor *Ciccone*, either alone or in combination, teach or suggest every element of Claim 9. Applicant respectfully requests the Examiner to reconsider and withdraw the rejection for Claim 9.

Amended Claim 10 recites “automatically distributing the downloaded update to a disparate network site operating the first version of the program.” Applicant respectfully traverses the Examiner’s rejection of Claim 10. There is no suggestion or motivation to modify *Mathur* with “an automatically distributing step without a means for controlling the operator node N_o” as the Examiner claims. Office Action, p. 4. Instead, *Mathur* teaches away from this because *Mathur* teaches that “[w]hen the operator node N_o *receives a distribution command*, it relays appropriate messages to both the source node N_s and the destination node N_d.” *Mathur*, c. 5, ll. 27-30 (emphasis added). The Examiner admits that the “so called ‘operator node N_o’” is, by definition, the node “at which the distribution command

is entered.” Office Action, p. 4. Consequently, *Mathur* teaches away from the “automatically distributing” limitation, as *Mathur* teaches the “means for controlling the operator node” is manual. In addition, “[a] prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention.” MPEP § 2141.02 (emphasis added). Consequently, Applicant respectfully submits that *Mathur* does not disclose, teach, or suggest at least “automatically distributing.”

Amended Claim 10 further recites “automatically operating the second version of the program in place of the first version at the disparate network site.” *Mathur* teaches away from this as it discloses “an update process whereby a system software in a plurality of target nodes is designated as a preferred operative version of a node. The update process *is initiated by an operator command...*” *Mathur*, c. 12, ll. 62-66 (emphasis added). This process is detailed in Appendix A where the operator must run the SL_OPER_UPDATE_REQ method before the SLM_UpdateHandler function, the algorithm for updating the preferred operative version, may run. *See Mathur*, Appendix A, cc. 31-34.

Ciccone also teaches away from these elements. For example, *Ciccone* teaches “a user 58, administrator 50, or help desk person 54 employ the program sppcheck 40 to identify deviations from the expected product states.” *Ciccone*, c. 7, ll. 14-17 (emphasis added); *see also Ciccone*, FIGURE 2. In addition, while *Ciccone* teaches fourteen specific tasks that are automatically performed, *Ciccone* does not teach or suggest “*automatically* installing a downloaded update to generate a second version of the program” or “*automatically* determining whether the second version of the program is operating correctly.” *See Ciccone*, c. 20, l. 57 – c. 21, l. 10. Therefore, neither *Mathur* nor *Ciccone*, either alone or in combination, teach or suggest every element of amended Claim 10.

Further, the Examiner notes that “it would also have been obvious to one skilled in the pertinent art at the time of invention was made to implement such an automatic step into the *Mathur* system.” Office Action, p. 4. Applicant respectfully submits that the Examiner has not met the *prima facie* case for obviousness. “Although a prior art device may be capable of being modified to run the way the apparatus is claimed, there must be some suggestion or motivation in the reference to do so.” MPEP § 2143.01 (citation omitted). As the Examiner noted, *Mathur* “*advantageously provides* the operator a means for controlling the so called

‘operator node N_o.’” Office Action, p. 4 (emphasis added). The “advantageous” means of *Mathur* is a manual distribution command. Thus, *Mathur* indicates that the manual distribution command is better than “such an automatic step.” Office Action, p. 4. Therefore, not only is there no suggestion or motivation to modify *Mathur*, but *Mathur* teaches away from such a modification. Therefore, Applicant respectfully requests withdrawal of this rejection.

Applicant respectfully denies mischaracterizing the “*Mathur* manual command teachings,” Office Action, p. 4, as alleged by the Examiner. The Examiner seems to focus on the argument that “operator node N_o” may or may not be N_s. But Applicant did not argue at what node the operator enters the command. Instead, Applicant cited various portions of the language used by *Mathur* that explicitly teach the element of an operator entering a distribution command at *any* node. Applicant quoted *Mathur* in so far as “[a]dvantageously, the distribution is initiated by a ‘distribution command’ which is *entered by an operator at an input/output device in one of the nodes.*” The only mention of node N_s in Applicant’s arguments was a quote of *Mathur*’s teaching “the communication of a new system software version from a source node N_s to a destination node N_d.” Further, N_s is merely “[t]he node where the new version of system software is installed.” *Mathur*, c. 4, ll. 54-56. *Mathur* teaches that installation is not performed at N_s until it receives a distribution message from N_o. See generally, *Mathur*, c. 5, ll. 28-47. Thus, Applicant did not argue, nor is it relevant, at which node the operator entered the manual distribution command.

Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection for amended Claim 10. Independent Claims 11 and 12 are patentable for at least the reasons discussed above in association with Claims 9 and 10.

Further, Applicant respectfully traverses the Examiner’s Official Notice in regards to Claim 12. Applicant respectfully requests the Examiner to come forward with evidence that supports the Official Notice. See MPEP § 2144.03. Specifically, the Examiner should provide a reference or affidavit supporting such Official Notice. Applicant respectfully submits that the combination of *Mathur* and *Ciccone* with Official Notice fails to disclose or suggest Applicant’s invention. Thus, Applicant respectfully requests allowance of independent Claims 11 and 12.

Applicant respectfully traverses the Examiner's rejections of Claim 22. The Examiner submits that "it would become apparent to one skilled in the pertinent art at the time of the invention was made to implement and/or applying *Mathur* and *Ciccone* teaching for such a typical intrusion detection system." Office Action, p. 5. There is no teaching, suggestion, or motivation in either *Mathur* or *Ciccone* for such a modification because neither reference mentions an intrusion detection system.

Also, Claim 22 recites, in part, "each of the intrusion detection sensors operable ... to automatically install a downloaded update to generate a second set of intrusion detection signatures ... and to automatically distribute the downloaded update to the remaining intrusion detection sensors for installation." There is no suggestion or motivation to modify *Mathur* with "an automatically distributing step without a means for controlling the operator node N_o" as suggested by the Examiner. Office Action, p. 4. Instead, *Mathur* teaches away from this element because *Mathur* teaches that "[w]hen the operator node N_o receives a distribution command, it relays appropriate messages to both the source node N_s and the destination node N_d." *Mathur*, c. 5, ll. 27-30 (emphasis added). The Examiner admits that the "so called 'operator node N_o'" is, by definition, the node "at which the distribution command is entered." Office Action, p. 4. Consequently, *Mathur* teaches away from the "automatically distributing" limitation, as *Mathur* teaches the "means for controlling the operator node" is manual.

Consequently, Applicant submits that *Mathur* does not disclose, teach, or suggest every element of Claim 22. Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection for amended Claim 22.

Dependent Claim 26 depends from dependent Claim 13, which depends from independent Claim 12. Also, dependent Claims 23 and 24 depend from independent Claim 22. Claims 10, Claims 11, 12, and 22 are shown above to be allowable over the cited references. Thus, dependent Claims 13, 23, 24, and 26 are allowable over the cited references as depending from an allowable base claim and including further distinctions over the cited references. For at least these reasons, Applicant respectfully requests allowance of dependent Claims 13, 23, 24, and 26.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of Claims 9-13, 22-24, and 26.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

If there are matters that can be discussed by telephone to further the prosecution of this application, Applicant respectfully requests that the Examiner call their attorney at the number listed below.

Respectfully submitted,

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Date: April 23, 2002

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Attachment A – Marked-Up Claims

A marked-up version of the amended claims appears below. For the convenience of the Examiner, all of the pending claims have been reproduced regardless of whether amended or not. Kindly amend the claims as follows:

1. **(Previously cancelled without prejudice or disclaimer)**
2. **(Previously cancelled without prejudice or disclaimer)**
3. **(Previously cancelled without prejudice or disclaimer)**
4. **(Previously cancelled without prejudice or disclaimer)**
5. **(Previously cancelled without prejudice or disclaimer)**
6. **(Previously cancelled without prejudice or disclaimer)**
7. **(Previously cancelled without prejudice or disclaimer)**
8. **(Previously cancelled without prejudice or disclaimer)**

9. A method for updating a first version of a program operating at a network site, comprising:

in response to an automated event, automatically downloading from a remote site any update for the program;

automatically installing a downloaded update to generate a second version of the program;

after installation of the downloaded update, automatically determining whether the second version of the program is operating correctly;

in response to correct operation of the second version, operating the second version of the program in place of the first version at the network site; and

in response to incorrect operation of the second version, automatically restoring the first version of the program for operation at the network site.

10. **(Amended)** A method for updating a first version of a program operating at a network site, comprising:

in response to an automated event, automatically downloading from a remote site any update for the program;

installing a downloaded update to generate a second version of the program; and

operating the second version of the program in place of the first version at the network site;

automatically distributing the downloaded update to a disparate network site operating the first version of the program;

automatically installing the downloaded update to generate the second version of the program at the disparate network site; and

automatically operating the second version of the program in place of the first version at the disparate network site.

11. **(Amended)** A method for updating a first version of a program operating at a network site, comprising:

- in response to an automated event, automatically downloading from a remote site any update for the program;
- installing a downloaded update to generate a second version of the program;
- after installation of the downloaded update, automatically determining whether the second version of the program is operating correctly at the network site;
- in response to incorrect operation of the second version, automatically restoring the first version of the program for operation at the network site; and
- in response to correct operation of the second version at the network site:
 - automatically distributing the downloaded update to a disparate network site operating the first version of the program;
 - automatically installing the downloaded update to generate the second version of the program at the disparate network site; and
 - automatically** operating the second version of the program in place of the first version at the disparate network site.

12. **(Amended)** A method for updating a first version of a program operating at a network site, comprising:

in response to an automated event, automatically downloading from a remote site any update for the program;

automatically installing a downloaded update to generate a second version of the program; and

operating the second version of the program in place of the first version at the network site;

broadcasting over a network an update message;

receiving in response to the update message a request for the downloaded update from each of a plurality of disparate network sites operating the first version of the program;

automatically distributing the downloaded update to the disparate network sites requesting the downloaded update;

automatically installing the downloaded update to generate the second version of the program at each of the disparate network sites; and

automatically operating the second version of the program in place of the first version at each of the disparate network sites.

13. The method of Claim 12, further comprising:

receiving a recovery event at one of the network sites;

automatically restoring the first version of the program at the network site at which the recovery event was received;

broadcasting a recovery message from the network site over the network; and

automatically restoring the first version of the program at each of the remaining network sites operating the second version of the program.

14. **(Previously cancelled without prejudice or disclaimer)**

15. **(Previously cancelled without prejudice or disclaimer)**

16. **(Previously cancelled without prejudice or disclaimer)**

17. **(Previously cancelled without prejudice or disclaimer)**

18. **(Previously cancelled without prejudice or disclaimer)**
19. **(Previously cancelled without prejudice or disclaimer)**
20. **(Previously cancelled without prejudice or disclaimer)**
21. **(Previously cancelled without prejudice or disclaimer)**

22. An intrusion detection system, comprising:

a private network including a plurality of sites connected to a public network, each site including an intrusion detection sensor operating with a first set of intrusion detection signatures; and

each of the intrusion detection sensors operable to automatically download from a remote site any update for the intrusion detection signatures in response to a specified event, to automatically install a downloaded update to generate a second set of intrusion detection signatures, to operate with the second set of intrusion detection signatures, and to automatically distribute the downloaded update to the remaining intrusion detection sensors for installation.

23. The system of Claim 22, wherein the specified event is an automated event.

24. The system of Claim 23, wherein the automated event is a timed event.

25. **(Previously cancelled without prejudice or disclaimer)**

26. **(Amended)** The method of Claim 13 wherein the recovery event occurs in response to incorrect operation of the [intrusion detection] second version of the program.